Supreme Court, U.S.
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No. 96-1480

In The

Supreme Court of the United States

October Term, 1996

STATE OF LOUISIANA, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

On Appeal From A Three-Judge Panel Of The United States District Court For The Western District Of Louisiana

APPELLANTS' BRIEF IN OPPOSITION TO MOTION TO AFFIRM

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BRIEF IN OPPOSITION TO MOTION TO AFFIRM

Appellants oppose the Motion to Affirm filed on behalf of the appellee, the United States of America, to focus the Court's attention to what is crucially at issue in this case, which is whether §5 can be administratively enforced by the United States Attorney General to repeal, invalidate, and/or render ineffective a 1960 state law, thereby denying the state its sovereign right to implement a pre-Voting Rights Act state law.

Additionally, appellants would draw the Court's attention to Section 5 of the Voting Rights Act as it has denied Louisiana and eight (8) other similarly situated states [and to a lesser extent those other states with counties affected thereby] any semblance of the protection afforded to states by the Guarantee Clause of the United States Constitution [U.S. Const., Art. IV, cl. 4], and focus on these proceedings as they reflect a total absence of due process and state sovereignty rights [U.S. Const., Art. VI, cl. 2] by the United States Attorney General in her application of Section 5 of the Voting Rights Act, i.e. (1) In failing to follow the decisions of this Court in analyzing the preclearance requirements pertaining to territorial annexations; (2) In failing to follow her own regulations as promulgated by the United States Department of Justice in analyzing territorial annexations for preclearance purposes; (3) In withholding preclearance of city annexations for the city court, and more importantly implementation of precleared city annexations for the city court, based upon an alleged violation of the results standard incorporated in Section 2 of the Voting Rights Act; and (4) In invoking a three-judge district court injunction proceeding for the purpose of finding that the United States Attorney General has not precleared 327 territorial annexations to the City of Shreveport as they affect the Shreveport City Court, where these same annexations have been previously precleared for the City of Shreveport, and advising the three-judge district court that as a remedy the State of Louisiana and the City of Shreveport be required to invoke a proceeding in the District Court of the District of Columbia and then in that court asserting collateral

estoppel and res judicata based upon the decision of the original three-judge district court.

I. The crucial issues herein, i.e. (1) whether the provisions of 42 U.S.C. §1973c require a submission under §5 of the same city annexations more than once in order to allow the annexations to have their intended effect under state law, and (2) whether the preclearance requirement of §5 can properly operate so as to practically repeal or render ineffective state laws enacted prior to the Voting Rights Act, need to be addressed by this Court.

The three-judge district court acknowledged that its limited jurisdiction was to perform a narrowly defined task, to "determine whether the City of Shreveport, Louisiana (City) and the State of Louisiana (State) have properly complied with the preclearance requirements of Section 5 of the Voting Rights Act of 1965", i.e. whether city annexations affecting the geographical jurisdiction of the City Court have been precleared pursuant to §5 of the Voting Rights Act. J.S.App.1a-2a. The court's task was a simple one because on September 6, 1994, the Attorney General interposed an objection under §5 to the same city annexations that it previously precleared [J.S.App. 6a.], after efforts to dissuade the Justice Department from requiring this duplicative submission failed, and the City of Shreveport reassembled all of the previously precleared data developed during six city administrations and resubmitted such data to the United States Attorney General. The three-judge district court did not resolve the issues presented in this matter pertaining to the Justice Department's implementation of Section 5. Likewise, what appellee would like this Court to do is simply give its affirmation to its unwieldy authority under Section 5 and refrain from reviewing and addressing the issues raised by the State and the City of Shreveport.

The State of Louisiana provided in Louisiana Act No. 32 of 1960, for a city court in the City of Shreveport with its territorial boundaries linked to the ward of its domicile (Ward 4) and the city limits, as extended from time to time. Meanwhile, the city extended its boundaries from time to time,

followed the procedures of §5 and received preclearance from the United States Attorney General for all of its annexations and of its charter. J.S.App.3a. As provided by Louisiana Acts No. 32 of 1960, the Shreveport City Court has continued to operate within Ward 4 and the city limits, as extended from time to time. By the 1990 census, the only area of Ward 4 which is not within the city limits contains only a population of 579. Subsequent to the passage of the Voting Rights Act, the State of Louisiana has attempted to make various changes to the city court, including the number of judges and the method of electing such judges, but these changes were blocked by the United States Attorney General by her administrative review under Section 5 [J.S. 5] and Section 2 of the Voting Rights Act. [*See*, Justice Department's denial of preclearance letter of September 6, 1994, attached to the Complaint as Exhibit A, "In addition, the Section 5 procedures (28 C.F.R. §51.55(b)(2)) require that preclearance be withheld while a change presents a clear violation of the results standard incorporated in Section 2 of the Voting Rights Act, 42 U.S.C. 1973." *United States v. Louisiana, et al.*, 952 F.Supp. 1151 (W.D.La.1997), *appeal docketed*, 65 U.S.L.W. 3649 (No. 96-1480).] Thereafter, the United States Attorney General filed this action to "block the September 1996 elections", thereby seeking to prevent the State of Louisiana from enforcing its pre-Voting Rights Act state law. Motion to Affirm, p. 8.

In the United States District Court for the District of Columbia, the United States Attorney General is asserting the defense of collateral estoppel and res judicata, thereby seeking to block the district court in the District of Columbia from addressing the issues raised by the State and City of Shreveport pertaining to the Justice Department's implementation of Section 5. Likewise, in its Motion to Affirm, the United States now suggests that this Court refrain from addressing those issues. The actions of the Justice Department in prohibiting the state from implementing its *pre*-Voting Rights Act state law, in prohibiting the state from implementing its *post*-Voting Rights Act state laws, and in now seeking to prohibit *any* court, including the District Court for the District of Columbia and this Court, from reviewing such practices

amounts to a complete and wholesale usurpation of the State of Louisiana's sovereign power of organizing and allocating its judiciary.

II. Additional issues herein, focusing on denial of due process, state sovereignty rights, and administrative abuse under Section 5 of the Voting Rights Act, merit review by this Court.

The United States Attorney General in her application of Section 5 of the Voting Rights Act, has effectively denied the State and the City of Shreveport its due process rights, and right of sovereignty to provide for its city courts, all under the pretext of her administrative powers under 42 U.S.C. 1973c, as hereinafter detailed.

1. Upon a second review of the same annexations, the Attorney General failed to follow the decisions of this Court in analyzing the preclearance requirements pertaining to territorial annexations.

Not only did the Attorney General force the City of Shreveport to make a second separate and duplicate submission of the city's annexations [J.S. 5; Motion to Affirm, pp. 4-5], but in reviewing for a second time the same 327 annexations to the city, the United States Attorney General denied preclearance for two reasons. First, she took the pre-annexation area as it existed on November 1, 1964 and compared 1990 census figures for that area so as to create an artificial retrogressive condition as to the black population within this restrictive area of an eleven percentage point decrease in the black population percentage. [Justice Department's denial of preclearance letter of September 6, 1994, attached to the Complaint as Exhibit A. *United States v. Louisiana, et al.*, 952 F.Supp. 1151 (W.D.La.1997), *appeal docketed*, 65 U.S.L.W. 3649 (No. 96-1480).] This Court has on two occasions held that the retrogression standard is determined by the relative black/white population percentages as they exist *after* consideration is given to the submitted annexations. *See*, *City of Richmond v. United States*, 422 U.S. 358 (1975) and *City of*

Rome v. United States, 446 U.S. 156 (1980). The ratio of black to white has increased by these annexations by over 10% while the white to black ratio has decreased by over 11%. J.S. 10. *See also*, table in jurisdictional statement at page 10.

If one examines all of the 327 annexations together, as the Justice Department acknowledged had occurred,[1] and used the 1990 census data, then the converse is true, the black to white ratio increased by over 10% and the white to black ratio deceased by over 11%.[2] While the white population during this period has increased by only 185, the black population has increased by 32,253. The annexations clearly have favored the black population within the territorial district of the Shreveport City Court to a substantially greater extent than they have the white population.

The second reason given by the United States Attorney General in refusing to preclear the city's previously precleared annexations for implementation by the Shreveport City Court was said to be:

> In addition, the Section 5 procedures (28 C.F.R. 51.55(b)(2)) require that preclearance be withheld while a change presents a clear violation of the results standard incorporated in Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

See, Justice Department's denial of preclearance letter of September 6, 1994, attached to the Complaint as Exhibit A. *United States v. Louisiana, et al.*, 952 F.Supp. 1151 (W.D.La.1997), *appeal docketed*, 65 U.S.L.W. 3649 (No. 96-1480).

In *Reno v. Bossier Parish School Board*, 65 U.S.L.W. 4308 (U.S. May 12, 1997), this Court reconfirmed its earlier holdings that §5 [of the Voting Rights Act] is designed to

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[1] The Justice Department's letter dated September 6, 1994, Exhibit A attached to the Complaint. *United States v. Louisiana, et al.*, 952 F.Supp. 1151 (W.D.La.1997), *appeal docketed*, 65 U.S.L.W. 3649 (No. 96-1480).

[2] The census data which established the lack of retrogression was admitted at the time of the Hearing below [Hearing Exhibit 4], at which the Justice Department admitted the authenticity of this data but objected to its relevance.

combat only those effects that are retrogressive, *Id.* at 4311, and refused to give 28 C.F.R. §51.55(b)(2) (1996) any controlling weight. *Id.* at 4312. This Court did, however, remand so as to permit the *Reno* court below to determine whether some of the "§2 evidence" may be relevant to establish a jurisdiction's "intent to retrogress" and left open for another day the question whether the §5 purpose inquiry ever extends beyond the search for retrogressive intent. *Id.* at 4312.

Here, of course, there can be no "intent to retrogress" for there was no retrogression. Even though the Attorney General previously precleared each of these 327 annexations [J.S.App. 3a; Motion to Affirm, p. 3], she once again required that these same annexations be resubmitted by the city for preclearance on behalf of the city court and prior to implementation in accordance with Louisiana Act No. 32 of 1960. J.S.App. 5a; Motion to Affirm, p. 5.

2. Upon a second review of the same annexations, the Attorney General failed to follow her own regulations as promulgated by the United States Department of Justice in analyzing territorial annexations for preclearance purposes.

The acting Solicitor General in the Motion to Affirm as filed on behalf of the United States of America, failed to address appellants' argument concerning the Department of Justice's administration of Section 5 of the Voting Rights Act, and particularly how the Attorney General failed to follow her own regulations concerning the manner in which annexations are to be considered. J.S. 6, n.4. These annexation regulations are set forth in 28 C.F.R. §51.61 (28 C.F.R. Ch.1 (7-1-96 Edition), Page 112).

Since the Justice Department testified that §51.61(b) was complied with,[3] one starts off with the premise that the

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[3] MR. MELLETT: [T]he Attorney General, when she looked at these annexations, reviewed them all at the same time. She reviewed all 327, and that is provided in our regulations, and its also

Attorney General was well aware that the annexations taken as a whole, as the regulations require, resulted in her full knowledge that there was *no* retrogressive effect, for the black to white ratio increased by over ten percentage points, while the white to black ratio decreased by over eleven percentage points. Retrogression, if at all, occurred in the white, and not the black, community.

As to the regulatory three factors: (1) The Attorney General therefore could not find under §51.61(c)(1) that the annexations reflected either a purpose or effect of excluding minorities while including the similarly situated persons, for the opposite was true, the minorities were not excluded [If anyone was excluded it was the white population.]; (2) The Attorney General could not have found under §51.61(c)(2) a reduction in the minority's percentage at the time of the submission of the 327 annexations, for the minority's percentage was increased rather than being reduced; and (3) The Attorney General could not have found a failure under §51.61(c)(3) of a favorable reflection of minority voting strength in the post annexation jurisdiction for, again, it can only be said that the minority voting strength increased while the non-minority voting strength decreased.

3. The Attorney General abused her authority in first requiring, and second in withholding, preclearance of city annexations for the city court, and implementation of these precleared city annexations for the city court, based upon an alleged violation of the results standard incorporated in Section 2 of the Voting Rights Act.

Since the first reason given for denying preclearance, retrogression, which did not and could not have occurred as to

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provided as suggested by the Supreme Court, that that is how that is to be done;

United States v. Louisiana, et al., 952 F.Supp. 1151 (W.D.La.1997), *appeal docketed*, 65 U.S.L.W. 3649 (No. 96-1480). Extract from Transcript of Hearing held on October 29, 1996, P. 45, LL 3-7.

these 327 annexations, one must conclude that preclearance was denied because of an intent on the part of the Justice Department to do what this Court in *Reno, supra,* has said the Justice Department could not do, "require preclearance to be withheld where a change presents a clear violation of the results standard incorporated in Section 2 of the Voting Rights Act". *See,* Justice Department's denial of preclearance letter dated September 6, 1994 filed as Exhibit A to the Complaint. *See also, Reno v. Bossier Parish School Board,* 65 U.S.L.W at 4311.

As this Court held twenty-two years ago, "[A]s long as the [ward] system fairly reflects the strength of the negro community as it exists after the annexation, we cannot hold without more specific legislative directions, that such an annexation is nevertheless barred by Section 5." *City of Richmond v. United States,* 422 U.S. 358, 371 (1975). This begs the question whether the Justice Department properly demanded a second review of the same 327 annexations to the city, only to make a Section 2 finding as to the 1960 system in effect under state law.

4. In invoking a three-judge district court injunction proceeding for the purpose of finding that the United States Attorney General has not precleared 327 territorial annexations to the City of Shreveport as they affect the Shreveport City Court, where these same annexations have been previously precleared for the city, and advising the three-judge district court that as a remedy the State of Louisiana and the City of Shreveport be required to invoke a proceeding in the District Court of the District of Columbia and then in that court asserting collateral estoppel and res judicata based upon the decision of the original three-judge district court, the Attorney General has forced her will upon the State of Louisiana and the City of Shreveport.

In the three-judge district court proceeding, the Justice Department requested the court to grant the following relief, either to file a proceeding in the District Court for the District

of Columbia within thirty (30) days, or to require a new election from the November 1, 1964 territorial boundaries of the Shreveport City Court. J.S.App. 49a.

Within the prescribed time period set by the three-judge district court, forty-five days, an action was commenced in the District Court for the District of Columbia. *State of Louisiana, et al. v. United States of America*, United States District Court for the District of Columbia, Civil Case No. 97-241 (Three-Judge Court). Once, however, the Complaint was filed, in response thereto the Justice Department asserted as its first affirmative defense:

> *1. The United States asserts the defenses of res judicata and collateral estoppel. Plaintiffs are attempting to relitigate whether the voting changes to the Shreveport City Court have been precleared previously and other issues that were decided by the three-judge court in United States v. Louisiana, et al., 952 F.Supp. 1151 (W.D. La. 1997), appeal docketed, 65 USLW 3649 (No. 96-1480)*

Again, the entire course of events concerning the Shreveport City Court clearly indicates the Justice Department's attempt to eliminate any ability of the State to provide for its courts and rather to substitute the whim and the will of the Justice Department as to how the Shreveport City Court should be constituted and operated. Such abuses under the administration of Section 5 of the Voting Rights Act as applied must be reviewed and addressed.

CONCLUSION

This Court recently retracted from its normal practice of giving "great deference" to the Attorney General's construction of the Voting Rights Act in *Reno v. Bossier Parish School Board, supra*. If this Court accepts the United States Attorney General's construction of the Voting Rights Act in this case, it would impose a demonstrably greater burden on the State of Louisiana, its cities and city courts, as well as the eight (8) other states and seventy-nine (79) counties subject to Section 5 of the Voting Rights Act of 1965. *See*, 28 C.F.R. Ch.1

(7-1-96 Edition), Pages 113-115. The Attorney General's actions in this matter are an attempt to obtain through §5 what the law forbids, review of a pre-Voting Rights Act state law, which actions require review by this Court.

All the above and foregoing is thus respectfully submitted,

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